

*Osberg v. Foot Locker, Inc., et al.*, 07-cv-01358 (KBF) (S.D.N.Y.)

## **Joint Pretrial Order**

**July 1, 2015**

## **Exhibit 11F**

## **Declaration of Ralph Campuzano**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

completely at odds with what I was told and understood at the time. I don't believe it would be right for the court to let Woolworth get away with doing that to me and other Woolworth employees.

3. Based on the communications I received from Woolworth, my understanding was that my pension was growing the entire time I worked there. The way that Woolworth described the pension plan changes in 1995-1996, I believed that the company had converted the benefit that I had earned up through December 31, 1995 into an account balance and that for each year that I continued working after January 1, 1996, Foot Locker added credits to my account so that my account would grow each year. I understood that the opening account was my pension benefit and that growth in my account equated to growth in my pension.

4. I did not know that the credits made to my account after January 1, 1996 were not included in the lump sum payment that I received in 1998 because Foot Locker did not tell me fact. I never had any reason to think that the full value of my December 31, 1995 accrued benefit was not reflected in my opening account balance. I assumed that benefit amount was simply deposited into my opening account. I was very loyal to Woolworth and trusted the company to be upfront with me. That is why I am shocked that this happened. I still don't completely understand it.

5. While I worked for Woolworth, I read all of the communications I received about the pension plan and kept those documents in my files. Based on my reading of those materials, I understood that the pension plan promised to provide me with an annuity beginning when I retired at age 65. I thought at the time that I would end up staying with the company until I retired, so when receiving and reviewing pension plan-related materials, I did not give any thought to receiving benefits at an earlier age. My understanding was that as I worked for the

company, I earned pension benefits under a percentage formula based on my annual compensation.

6. Prior to the pension plan change in 1996, I received annual statements showing my pension growing from the previous year. One was a retirement plan statement that reported only my pension benefit, directly showing me how much my annuity benefit had increased over the previous year. The other type of statement I received showed me all the benefits that Woolworth provided, how much those benefits cost Woolworth, and the current amount of my retirement benefit.

7. After the announcement of the plan change in late 1995, Woolworth continued to send me statements that remained very similar in form and content, showing me my new account balance, how much my account had grown from the previous year, and the cost to the company of providing these benefits. The 1996 plan statement that I received is exhibit PX356, the 1997 plan statement I received is exhibit PX61, and my 1997 statement showing all of my Woolworth benefits is exhibit PX53. I understood at the time that the benefits I had were growing each year and that my benefit increases each year “cost” the company money to provide those benefits.

8. I first learned about Woolworth changing the plan from a September 1995 letter from the CEO and President of Woolworth Corporation. That document is exhibit PX2. I remember that it was a very positive announcement and that changes to the pension plan were improvements. It said that the pension was going to be expressed as an account that I would have the opportunity to watch my benefit grow by watching my account grow, and my pension would now be easier to track. The letter was clear to me and I did not think from reading it that anything bad was happening or would be happening to my pension.

9. The next communication about the Plan changes I received came later in Fall 1995 from the benefits department. That document is exhibit PX4. I understood from that memo that the company would be taking the monthly benefit I had already earned and simply converting it into a cash balance account. I understood that the account would continue to grow year-after-year until I ultimately retired.

10. I remember continuing to receive plan statements in 1996 and thereafter. I kept those statements in my personal files, some of which I still possess (PX53, PX61, PX356). The initial 1996 plan statement showed me how much Foot Locker put in my cash balance account. That statement showed my prior monthly benefit on the left-hand side and the new account on the right-hand side, so it looked to me like the money I had previously earned was being deposited in my account to start.

11. I believe that statement was updated shortly thereafter (exhibit PX356). That updated statement showed the account balance at the top (\$10,742.79) and said that it was the amount that I could expect to receive upon termination of employment or retirement if I elected a Lump Sum form of payment. I assumed that statement to be true at the time. The statement referenced compensation credits I would earn during 1996. I took as a given that those compensation credits would have value for me. I did not consider for a second that they might be “phantom” credits that I would never actually earn and receive.

12. The next statement I received in 1997 did not show any annuity benefit amount. That statement is exhibit PX61. That statement showed that I started with a \$10,742.79 account balance on January 1, 1996 and that during 1996 my account grew by about \$2,500 such that my end-of-year December 31, 1996 account balance was \$13,284.12. I understood at the time that the \$2,500 account balance growth was real pension dollars that I was earning. There was no

indication to me in this statement or elsewhere that that money was not actually pension dollars that I had earned based on my service with the company during 1996. The statement said that the 12/31/96 account balance was what I “could expect to receive upon termination of employment or retirement if [I] elect the lump sum form of payment and do not receive future Interest and Compensation Credits.” I had no reason to question that statement at the time, as it appeared straightforward. I took for granted that the growth in the account was real value to me.

13. There was also a benefit statement that the company sent that included all of the other types of benefits the company provided. I still have a copy of that statement from 1997, which is exhibit PX53. That statement says that the company’s annual estimated cost of providing me all of my benefits is \$12,758. I assumed that my pension benefits contributed to this cost. Knowing now that my pension was actually frozen at the time, I’m stunned that the company decided to make me think that the pension was actually costing it money at the time and told me that. The page of this statement related to retirement benefits shows that my account was growing in 1996 in the same way the 1997 plan statement did – that my account grew from \$10,749.79 to \$13,284.12 during 1996. The statement also provided information concerning the compensation credits and said that my account balance was growing with interest at 6% per year. There is nothing in this document that caused me to think that my benefit was not growing or was frozen.

14. I received a summary plan description that I remember reading through. That document is trial exhibit PX5. I understood that the company had opened an account for me in 1996 and put into it the amount of the annuity I had earned through the end of 1995. I didn’t read anything in that document that indicated to me or signaled to me that my benefit would be frozen or might be frozen. I didn’t understand every single thing in that document but my

general understanding was that an account was created from my old annuity benefit and that it would grow. Some of the language describing the creation of the account balance in the SPD seemed technical, but I do recall understanding that the account balance was set up based on IRS rulings.

15. I did not understand that my annuity benefit that I had earned under the prior formula had any relevance on an ongoing basis based on what I read in the SPD and the other documents I received. I certainly had no suspicion that my benefit had been frozen after reading the SPD. My understanding from reading the SPD was that my benefit was the account. I did not read anything in the summary plan description indicating any negative impact and so I did not think I had any reason to request additional documents in order to further investigate what I was told. I did not have any questions about the time about the pension plan that I felt I needed to ask. As far as I knew, I was continuing to earn a good pension benefit that was growing.

16. I don't recall there being any HR-led meetings or presentations at the Woolworth offices or anywhere else about the pension plan changes in 1995-1996. I and the hundreds of other employees who worked in the Woolworth building at the time got our understanding of what was going on from the written materials we were sent. Although some of the documents told me that I could call Human Resources about any questions I had about the pension plan, nothing was said in a negative way that made me think I had anything to be concerned about and so I never had any reason to call. Everything appeared to me to be above-board. I certainly trusted Woolworth as my employer. As far as I can recall, no one who I knew or worked with expressed any concern with the changes to the pension plan.

17. When I ended my employment with the company in 1998, I elected a lump sum form of payment. The lump sum amount was \$26,118.55. I knew at the time that amount was

larger than the account balance that I was shown as of the end of 1997. My understanding at the time was that my account balance had grown with compensation credits and interest credits for another 13 months. I remember thinking that the account balance had to be increased as part of a required pension calculation. There was nothing about the lump sum amount that gave me any type of suspicion that my benefit had been frozen. I just thought that the amount I received was what I was entitled to and that it was correctly calculated.

18. Based on the information that the company gave me, I'm not sure how I could have discovered that my benefit had been frozen from 1996 through 1998 and that none of the growth in my account mattered to the larger lump sum that I received. I still don't completely understand how Woolworth managed to freeze my pension as it did given that my account was growing, just like Woolworth told me it would. I believe that I, and others like me, should receive the pension growth we were told we would receive in exchange for our work in 1996 and later based on the communications that the company sent us. We trusted the company to do right by us.

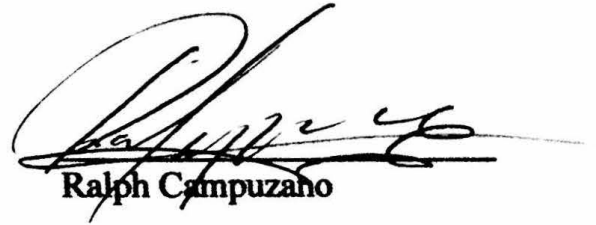
19. Woolworth never informed me that I would not earn any more pension benefits after the Plan was changed on January 1, 1996, or even that there was a risk that I might earn nothing more for any period of time. Woolworth certainly never told me that I would not earn any new pension benefits on and after January 1, 1996. Foot Locker also never told me when they paid me my lump sum that the amount I received did not include any of the compensation and interest credits that I thought they had added to my account and pension benefit when I watched it grow in 1996 and 1997.

20. Had I been informed of what was actually going on behind the scenes, that my benefit would or might be frozen, and/or that my benefit would be calculated without including



the credits added to my account after January 1, 1996, I would have been very upset. I believe that I and others in the Woolworth building would have complained. At the time that the plan changes was announced in the Fall of 1995, I was secure in my employment, had never received a negative performance review, and had been consistently promoted. I had no reason to think that my position might be terminated at that time or in the near future. I honestly believe that I would have complained, as my pension was important to me. There's no way that I would have accepted that new employees could come in off the street and start earning a pension while my pension would be frozen for some unknown, extended period of time. I had many other co-workers who were not fearful of their job at the time who I'm sure would have voiced displeasure had the true plan changes (freeze) been accurately communicated to us rather than the company misleading us.

**Dated: July 1, 2015**



Ralph Campuzano